

## **IC 3-12-5**

### **Chapter 5. Certificates of Election and Commissions**

#### **IC 3-12-5-1**

##### **Statements to election division as to certain election results; issuance of certificate**

Sec. 1. (a) Whenever a candidate is elected to a local office that is commissioned by the governor under IC 4-3-1-5, the circuit court clerk shall prepare a statement under the clerk's seal specifying the number of votes received by each candidate for that office.

(b) The statement prepared under subsection (a) must also include the number of votes cast for and against the following:

- (1) The ratification of a state constitutional amendment submitted to the electorate.
- (2) The retention of a justice of the supreme court or a judge of the court of appeals or tax court.
- (3) Each candidate who was declared elected by the county election board under IC 3-12-4-9.

(c) The clerk shall send or hand deliver the statement to the election division not later than noon on the Monday following election day.

(d) The election division shall tabulate the votes received under this section. Not later than the second Friday after the election, the secretary of state shall issue a certificate certifying the following:

- (1) Each state constitutional amendment ratified or rejected.
- (2) Each justice or judge retained or removed.

(e) The election division shall provide a copy of a certificate described by:

- (1) subsection (d)(1) to the chief justice of the Indiana supreme court and the director of the office of code revision of the legislative services agency; and
- (2) subsection (d)(2) to the chief justice of the state.

(f) The election division shall provide a copy of all statements received under this section to the office.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1987, SEC.365; P.L.5-1988, SEC.10; P.L.4-1991, SEC.114; P.L.3-1993, SEC.208; P.L.3-1997, SEC.344; P.L.212-2001, SEC.22.*

#### **IC 3-12-5-1.5**

##### **Sending certified or sealed statements electronically**

Sec. 1.5. (a) This section applies to a statement required to be sent or delivered to the election division by a circuit court clerk under this chapter.

(b) A statement described in subsection (a) may be sent by using the computerized list established under IC 3-7-26.3. A statement sent under this section complies with any requirement for the statement to be certified or sealed.

*As added by P.L.209-2003, SEC.187.*

#### **IC 3-12-5-2**

**Office not commissioned by governor; delivery of certificate of candidate's election on demand**

Sec. 2. (a) Whenever a candidate is elected:

(1) to a local or school board office other than:

(A) one for which a town clerk-treasurer issues a certificate of election under IC 3-10-7-34; or

(B) one commissioned by the governor under IC 4-3-1-5; or

(2) a precinct committeeman or state convention delegate;

the circuit court clerk shall, when permitted under section 16 of this chapter, prepare and deliver to the candidate on demand a certificate of the candidate's election.

(b) This subsection applies to a local or school board office described in subsection (a) with an election district located in more than one (1) county and a local public question placed on the ballot in more than one (1) county. The circuit court clerk of the county that contains the greatest percentage of the population of the election district shall, upon demand of the candidate or a person entitled to request a recount of the votes cast on a public question under IC 3-12-12:

(1) obtain the certified statement of the votes cast for that office or on that question that was prepared under IC 3-12-4-9 from the circuit court clerk in each other county in which the election district is located;

(2) tabulate the total votes cast for that office or on that question as shown on the certified statement of each county in the election district; and

(3) issue a certificate of election to the candidate when permitted under section 16 of this chapter or a certificate declaring the local public question approved or rejected.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1987, SEC.366; P.L.10-1988, SEC.130; P.L.3-1989, SEC.12; P.L.10-1992, SEC.25; P.L.38-1999, SEC.58.*

**IC 3-12-5-3**

**Unopposed candidate for local office; certification of candidate as if elected**

Sec. 3. Whenever a candidate for a local office described in section 2 of this chapter is unopposed, the circuit court clerk shall, upon demand of the candidate, certify the candidate in the same manner as if elected to the office.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1987, SEC.367.*

**IC 3-12-5-4**

**Governor not to withhold commission because of defect or informality in election return to election division**

Sec. 4. The governor may not withhold a commission because of a defect or informality in an election return to the election division if it can be determined with reasonable certainty from the return what office is intended and who is entitled to the commission.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1997, SEC.345.*

### **IC 3-12-5-5**

#### **Governor and lieutenant governor; certified sealed statements; transmission of statements**

Sec. 5. (a) Not later than noon on the Monday following an election for governor and lieutenant governor, each circuit court clerk shall prepare a certified statement under the clerk's seal showing the number of votes each candidate received. The clerk shall transmit the statement to the election division. The election division shall deliver:

- (1) the statement to the speaker of the house of representatives before the date described in subsection (b); and
- (2) a copy of each statement to the office.

(b) The house of representatives and the senate shall meet in joint convention not later than the date specified in Article 5, Section 9 of the Constitution of the State of Indiana for the commencement of the term of the governor and the lieutenant governor to hear the canvass of votes cast for governor and lieutenant governor.

(c) The joint convention shall act to resolve any:

- (1) tie vote, as required under Article 5, Section 5 of the Constitution of the State of Indiana; or
- (2) contest under Article 5, Section 6 of the Constitution of the State of Indiana.

(d) The joint rules that governed the house of representatives and senate before the general election govern the joint convention until those rules are amended as provided in those rules.

(e) After resolving any tie or contest, the presiding officer of the joint convention shall certify to the convention that the individuals receiving the most votes according to the canvass have been elected governor and lieutenant governor.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1987, SEC.368; P.L.3-1993, SEC.209; P.L.4-1995, SEC.13; P.L.3-1997, SEC.346; P.L.212-2001, SEC.23.*

### **IC 3-12-5-6**

#### **Certified and sealed statement of number of votes for each candidate**

Sec. 6. (a) Not later than noon on the Monday following an election, each circuit court clerk shall prepare a certified statement under the clerk's seal of the number of votes received by each candidate for:

- (1) federal office;
- (2) state office;
- (3) legislative office; and
- (4) a local office for which a declaration of candidacy must be filed with the election division under IC 3-8-2.

(b) The clerk shall send the statements by certified mail, return receipt requested, or hand deliver the statements to the election division.

(c) The election division shall provide a copy of each statement to the office.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1987, SEC.369; P.L.3-1993, SEC.210; P.L.3-1997, SEC.347; P.L.212-2001, SEC.24.*

### **IC 3-12-5-7**

#### **Tabulation of number of votes cast for each candidate**

Sec. 7. Upon receipt of the certified statements from the circuit court clerks under section 6 of this chapter and not later than noon of the last Tuesday in November, the election division shall tabulate the number of votes cast for each candidate for:

- (1) presidential electors;
- (2) a state office other than governor and lieutenant governor; and
- (3) a local office for which a declaration of candidacy must be filed with the election division under IC 3-8-2.

Immediately following the election division's tabulation, the secretary of state shall certify to the governor the candidate receiving the highest number of votes for each office.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1993, SEC.211; P.L.3-1997, SEC.348.*

### **IC 3-12-5-8**

#### **Amendments to certified statements; preparation of commission and transmittal to certified candidates**

Sec. 8. (a) If, not later than the final date and hour for filing a recount or contest petition under IC 3-12, a circuit court clerk files a correction with the election division that amends a certified statement under section 6 of this chapter and the amendment results in a different candidate receiving the highest number of votes for an office, the election division shall immediately notify the governor and the office of the amendment.

(b) If no errors are found by the final date and hour for filing a recount or contest under IC 3-12 and not later than noon on the first Tuesday in December following the election, the governor shall prepare the candidate's commission for each candidate certified under section 7 of this chapter.

(c) Immediately upon preparing the commissions under subsection (b), the governor shall deliver the commissions to the election division. Not later than the second Tuesday in December, the election division shall transmit the commission to each candidate at the address set forth in the declaration of candidacy filed with the division, or to any more recent address furnished to the division by the candidate.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1997, SEC.349; P.L.212-2001, SEC.25.*

### **IC 3-12-5-9**

#### **Candidates for United States Senator and United States Representative; tabulation of votes cast for each candidate; certificates of election**

Sec. 9. (a) Upon receipt of the certified statements from the circuit

court clerks under section 6 of this chapter, the election division shall:

- (1) tabulate the number of votes cast for each candidate for United States Senator and United States Representative; and
- (2) prepare a certificate of election for the secretary of state to transmit to:

(A) the governor for signature and certification to the secretary of the United States Senate, setting forth the name of the candidate receiving the highest number of votes for the office of United States Senator, in the manner required by 2 U.S.C. 1; and

(B) the clerk of the United States House of Representatives, setting forth the name of each candidate receiving the highest number of votes for United States Representative, in the manner required by 2 U.S.C. 26.

(b) The secretary of state shall promptly execute the certificate prepared under subsection (a)(2)(A) and transmit the certificate to the governor. The governor shall promptly execute the certificate and transmit the certificate to the election division for attestation by the secretary of state and transmission to the secretary of the United States Senate.

(c) The secretary of state shall promptly execute the certificate prepared under subsection (a)(2)(B) and transmit the certificate to the clerk of the United States House of Representatives.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1997, SEC.350; P.L.176-1999, SEC.93.*

### **IC 3-12-5-10**

#### **Candidate for United States Senator and United States Representative; transmission of certificate of election; seal and attestation**

Sec. 10. The election division shall transmit to each candidate certified under section 9 of this chapter an original copy of the certificate of election. The secretary of state shall seal and attest the certificate of election.

*As added by P.L.5-1986, SEC.8. Amended by P.L.176-1999, SEC.94.*

### **IC 3-12-5-11**

#### **Preparation of certified and sealed statement of number of votes received by candidate in county; transmittal to election division**

Sec. 11. (a) As soon as practical, but no later than noon on the Monday following an election for a legislative office, each circuit court clerk shall:

- (1) prepare a certified statement under the clerk's seal specifying the number of votes received in the county by each candidate for legislative office; and
- (2) send the statement by certified mail, return receipt requested, or hand deliver the statement to the election division.

(b) The election division shall provide a copy of each statement to the office.

*As added by P.L.5-1986, SEC.8. Amended by P.L.10-1988, SEC.131; P.L.3-1993, SEC.212; P.L.3-1997, SEC.351; P.L.212-2001, SEC.26.*

#### **IC 3-12-5-12**

##### **Election division to total statements from district and prepare and transmit certificate of election; tie votes**

Sec. 12. (a) Upon receipt of the certified statements under section 11 of this chapter, the election division shall:

- (1) immediately total all certified statements from each senate and house district; and
- (2) promptly prepare and transmit to the candidate receiving the highest number of votes for each legislative office a certificate of the candidate's election.

(b) The secretary of state shall sign the certificates prepared by the election division under subsection (a). However, if two (2) or more candidates receive the highest and an equal number of votes according to the tabulation prepared by the election division, the secretary of state shall immediately certify the tie vote to the governor.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1997, SEC.352.*

#### **IC 3-12-5-13**

##### **Estimating, aggregating, and tabulating total number of votes evidenced by face of certified statement**

Sec. 13. The election division may not reject a certified statement received under seal from a circuit court clerk under section 6 or 11 of this chapter but shall estimate, aggregate, and tabulate the total number of votes as evidenced by the face of each certified statement.

*As added by P.L.5-1986, SEC.8. Amended by P.L.3-1997, SEC.353.*

#### **IC 3-12-5-14**

##### **Correction of error in certification of vote**

Sec. 14. (a) This section does not apply to the correction of an error under IC 3-12-6-29 or IC 3-12-11-23.

(b) The county election board or the election division shall correct an error in the certification of the vote for a candidate or on a public question if the error is discovered not later than the final date and hour for the filing of a recount or contest under this article.

*As added by P.L.5-1986, SEC.8. Amended by P.L.4-1991, SEC.115; P.L.3-1997, SEC.354; P.L.66-2003, SEC.44.*

#### **IC 3-12-5-15**

##### **Failure or refusal to correct error; civil action to enforce duty to make correction**

Sec. 15. If a circuit court clerk or the election division fails or refuses to correct an error as required by section 14 of this chapter, then any voter may bring a civil action to enforce the duty to make the correction. A civil action under this section must be brought:

- (1) not later than noon five (5) days after the expiration of the period allowed for making corrections; and

(2) in the circuit or superior court of Marion County (if the action is brought against the election division) or the county where the public official making the erroneous certification resides (if the action is brought against a circuit court clerk).

*As added by P.L.5-1986, SEC.8. Amended by P.L.10-1988, SEC.132; P.L.3-1997, SEC.355.*

#### **IC 3-12-5-16**

##### **Certificate of election; issuance**

Sec. 16. A certificate of election may not be issued until the period allowed under section 14 of this chapter for the discovery and correction of errors has expired.

*As added by P.L.5-1986, SEC.8. Amended by P.L.38-1999, SEC.59.*

#### **IC 3-12-5-17 Repealed**

*(Repealed by P.L.3-1993, SEC.282.)*